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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

5 * * *

6 EBERTO BAUTISTA-EREDEA,

Case No. 3:20-cv-00403-LRH-CLB

7 Petitioner,

ORDER

8 v.

9 GARRETT, et al.,

10 Respondents.
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12 This action is a petition for a writ of habeas corpus filed pursuant to 28 U.S.C.
13 § 2254 by Nevada state prisoner Eberto Bautista-Eredea. On April 28, 2021, this court
14 granted petitioner's motion for counsel and appointed the Federal Public Defender to
15 represent petitioner in this action (ECF No. 25). On May 20, 2021, Martin Novillo of the
16 Federal Public Defender's Office appeared on behalf of petitioner (ECF No. 27). The
17 court now sets a schedule for further proceedings in this action.

18 **IT IS THEREFORE ORDERED** that counsel for petitioner meet with petitioner as
19 soon as reasonably possible, if counsel has not already done so, to: (a) review the
20 procedures applicable in cases under 28 U.S.C. § 2254; (b) discuss and explore with
21 petitioner, as fully as possible, the potential grounds for habeas corpus relief in
22 petitioner's case; and (c) advise petitioner that all possible grounds for habeas corpus
23 relief must be raised at this time in this action and that the failure to do so will likely
24 result in any omitted grounds being barred from future review.

25 **IT IS FURTHER ORDERED** that petitioner has **90 days** from the date of this
26 order to file and serve on respondents an amended petition for writ of habeas corpus, if
27 any.

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1 **IT IS FURTHER ORDERED** that respondents have **45 days** after service of an
 2 amended petition within which to answer, or otherwise respond to, the amended
 3 petition. If petitioner does not file an amended petition, respondents have 45 days from
 4 the date on which the amended petition is due within which to answer, or otherwise
 5 respond to, petitioner's original petition. Any response filed should comply with the
 6 remaining provisions below, which are entered pursuant to Habeas Rule 5.

7 **IT IS FURTHER ORDERED** that any procedural defenses raised by respondents
 8 in this case be raised together in a single consolidated motion to dismiss. In other
 9 words, the court does not wish to address any procedural defenses raised herein either
 10 in seriatum fashion, in multiple successive motions to dismiss, or embedded in the
 11 answer. Procedural defenses omitted from such motion to dismiss will be subject to
 12 potential waiver. Respondents should not file a response in this case that consolidates
 13 their procedural defenses, if any, with their response on the merits, except pursuant to
 14 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If
 15 respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they
 16 should do so within the single motion to dismiss not in the answer; and (b) they should
 17 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set
 18 forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no
 19 procedural defenses, including exhaustion, should be included with the merits in an
 20 answer. All procedural defenses, including exhaustion, instead must be raised by
 21 motion to dismiss.

22 **IT IS FURTHER ORDERED** that, in any answer filed on the merits, respondents
 23 must specifically cite to and address the applicable state court written decision and state
 24 court record materials, if any, regarding each claim within the response as to that claim.

25 **IT IS FURTHER ORDERED** that petitioner will have **30 days** after service of the
 26 answer or responsive pleading to file and serve his response.

27 **IT IS FURTHER ORDERED** that any additional state court record exhibits filed
 28 herein by either petitioner or respondents be filed with a separate index of exhibits

1 identifying the exhibits by number. The CM/ECF attachments that are filed also must be
2 identified by the number or numbers of the exhibits in the attachment.

3 **IT IS FURTHER ORDERED** that, at this time, the parties send courtesy copies of
4 **any responsive pleading and all INDICES OF EXHIBITS ONLY** to the Reno Division
5 of this court. Courtesy copies are to be mailed to the Clerk of Court, 400 S. Virginia St.,
6 Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the
7 mailing address label. **No further courtesy copies are required unless and until**
8 **requested by the court.**

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10 DATED this 14th day of June, 2021.

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12 LARRY R. HICKS
13 UNITED STATES DISTRICT JUDGE
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